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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202898
Party	Defendant Mikhail Levitin T/A Mikhail Levitin Institute
Correspondence Address	MIKHAIL LEVITIN PO BOX 102 REEDERS, PA 18352-0102 UNITED STATES vitality@ptd.net
Submission	Answer
Filer's Name	Mikhail Levitin
Filer's e-mail	vitality@ptd.net
Signature	/Mikhail Levitin/
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Attachments	Answer 08.28.12.pdf (10 pages)(41378 bytes) letter 10.09.70.pdf (1 page)(207597 bytes) Letter Revlon 1.15.70.pdf (1 page)(251219 bytes) letters Foreal.pdf (1 page)(219397 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

L'Oréal S.A. and L'Oréal USA, INC.,
Opposer,
vs.

In the Matter of Application
Serial No: 85/270,272
Re: Mark: FOREAL FOR'EAL
BY MIKHAIL

MIKHAIL LEVITIN T/A
MIKHAIL LEVITIN INSTITUTE,
Applicant

ANSWER TO AMENDED NOTICE OF OPPOSITION

The Applicant filed the mark: **FOREAL Foréal by Mikhail** but not FOREAL FOR'EAL BY MIKHAIL and answers to this AMENDED NOTICE in compliance with the APPEAL BOARD decision.

1. Admitted. Upon submitted information and believe the allegation is admitted.
2. Admitted. Upon submitted information and believe the allegation is admitted.
3. Admitted and Irrelevant. It admitted as events but irrelevant to the issue of marketing and protecting under the law of “anti aging” products.
4. Admitted. Upon submitted information and believe the allegation is admitted as events but supporting the fact that the Applicant has a seniority in marketing and protecting under the law his “anti aging” products.

It is also admitted that **L'Oréal** had no problem in legalizing in the USPTO all the products that are outlined in Exhibit A except an application for an “anti aging” cream.

5. Admitted. Upon submitted information and believe the allegation is admitted for the

6. Denied. Opposer has been advised that the averments of Paragraph 4 constitute legal conclusions to which no answer is required nor made but never was any claim made for or proven seniority of introduction of an “anti-aging” cream by **L'Oréal** over the Applicant’s “anti aging” product on the USA market.
7. Admitted in part and denied in part.

Admitted. **L'Oréal** has rights for all marked **L'Oréal's** products.

Denied. Exhibit I constitutes *prima facie* evidence of introducing Applicant’s “anti aging” product on the USA market under the protection of common law.
8. Admitted. Upon submitted information and believe the allegation is admitted but it also admitted that the Opposer is leading to the conclusion by impressing with its financial and political influence on the market.
9. Admitted. Upon submitted information and believe the allegation is admitted but it also admitted that the Opposer is leading to the conclusion by impressing with its financial and political influence on the market.
10. Admitted. Upon submitted information and believe the allegation is admitted. It is also admitted by this statement that **L'Oréal's intention** is holding a monopoly on the market.
11. Admitted. Upon submitted information and believe the allegation is admitted but it also admitted that the Opposer is leading to the conclusion by impressing with its financial and political influence on the market.

12. Admitted. Upon submitted information and believe the allegation is admitted. It is also admitted by this statement that L'Oréal's intention is to monopolize the market through its financial and political power.

13. Admitted. Upon submitted information and believe the allegation is admitted. It is also admitted by this statement that L'Oréal's is intimidating a competitor by associating its products with celebrities unrelated to the issue in question.

14. Admitted. Upon submitted information and believe the allegation is admitted. It is also admitted by this statement that L'Oréal's is trying to lead opinion by referring to its strong financial influence.

15. Admitted in part and denied in part.

Admitted. L'Oréal has rights for all marks and received the awards.

Denied. The awards are irrelevant to the issue in question about an “anti aging” cream because:

- L'Oréal Paris Skin Genesis are skin maintenance products (make up);
- L'Oréal Paris True Match are make up products;
- L'Oréal Paris Colour Riche Lipcolour are lipstick products (make up);
- L'Oréal Paris True Match are make up products;

As a matter of fact, none of these products have ever been applied to the category of “anti-aging cream”.

16. Admitted. It admitted these as events but the question remains to be answered: why L'Oréal with it's enormous financial and legal support never filed an application for an

anti aging cream in the USPTO while it has been done for all other **L'Oréal's** products.

17. Admitted in part and denied in part.

Admitted. **L'Oréal** became famous before March 17, 2011.

Denied. The common law has protected Applicant's product many years prior to March 17, 2011.

18. Admitted. Upon submitted information and believe the allegation is admitted as fact.

19. Admitted in part and denied in part.

Admitted. Applicant has filed the application #: 85/270,272 on March 17, 2011.

Denied. Applicant filed the mark: **FOREAL Foréal by Mikhail** but not
FOREAL FOR'EAL BY MIKHAIL.

20. Denied. The Applicant is using anti aging cream as an external nutritional product.

The Opposer specializes in cosmetic and make up products that have different mechanisms of actions on skin.

The Applicant assumes that English grammar has not been changed for the last 50 years.

Applicant specifically rebuts alleged fact by Opposer that **FOREAL Foréal by Mikhail** is causing "confusion or mistake, or has any intent to deceive" because:

- The applicant is applying the commonly used English words "for real" with the commonly used abbreviation "foreal" on the territory of the country were it has been used for quite a while before **L'Oréal** came into this market.

21. Denied.

There is no ground for “confusion or mistake or to deceive” between **L'Oréal** trademark and **FOREAL Foréal by Mikhail**.

There are no grounds for confusions or mistakes.

L'Oréal and **FOREAL Foréal by Mikhail** are different in spelling, meaning, and pronunciation.

1. **L'Oréal** starts with **L** followed by an apostrophe, **FOREAL Foréal by Mikhail** starts with **F** with NO apostrophe;
2. **L'Oréal** is a noun that has NO meaning in the English language;
FOREAL Foréal by Mikhail is a prepositional phrase with an emphasis on the word “real” as dictated by the grammar;
3. Different meanings. According to English Urban Dictionary:

1. fo real:

said in conversations to confirm that one is serious and NOT kidding around this time. Often said in anger but can be said kidding around and you are NOT fo real.. your just kidding... and it is oddly ironic.

2. fo real:

A phrase:

A) to ask if one is serious

B) to agree with

Meaning A:

K: Shorty was backing out of the driveway and ran over my foot with her car!

P: Fo real?

Meaning B:

K: Man, Shorty sure do look fine in that dress!
C: Fo real!

4. The letter combination “**ea**” in the English language is unmistakably different then in the famous (according to #17) word **L'Oréal**.

For example, in commonly used words in English language “bear, clear, dear, fear, hear, heal, pear, plea, near, tear, sear, seal, seam, scream” the stress is on the "e" part of the diphthong, not on "a" as it is in the word

L'Oréal:

FOREAL Foréal by Mikhail [fo ↗ re ↘ al] and it is opposite in

L'Oréal [lo ↘ re ↗ al].

In conclusion, **L'Oréal** and **FOREAL Foréal by Mikhail** have different roots in spelling, meanings, and pronunciations in the USA were the application has been filed and so the allegation for “confusion or mistake” does not have any ground. There is no proof made by Opposer for the allegation “to deceive” against the Applicant.

22. Denied.

The statement “confusion or mistake, or has any intent to deceive” made by the Opposer about the Applicant has no legal or logical grounds and is influenced only by financial and political interests, and the intent to completely monopolize the market.

To the contrary, the Applicant has conducted an anonymous survey of 50 English speaking legal residents of the USA requesting:

1. to pick up a product with the label **L'Oréal** from 25 different trademark labels representing products in the same field including **L'Oréal** and **FOREAL Foréal by Mikhail**;

Results: all 25 people picked up **L'Oréal** – no confusions.

2. to pick up a product with the label **L'Oréal** from 25 different trademark labels including **FOREAL Foréal by Mikhail** without **L'Oréal** label;

Results: all 25 people did not pick up any label – no confusions.

In conclusion, to a reasonable degree in English rhetorical certainty, the accusation “confusion or mistake, or has any intent to deceive” made by the Opposer about the Applicant is only vandalizing the English language.

23. Denied.

The Opposer is intentionally and repeatedly misleading the examiners by emphasizing its financial and political power in the USA market.

The Sherman Anti-Trust Act of 1890 (15 U.S.C.A. § 1 et seq.) is the basis for antitrust law. Congress also added amendments to it at various times through 1950. The most important are the Clayton Act of 1914 (15 U.S.C.A. § 12 et seq.) and the Robinson-Patman Act of 1936 (15 U.S.C.A. § 13 et seq.), protected also under the Federal Trade Commission Act of 1914 (15 U.S.C.A. §§ 41--58).

24. Admitted. Upon submitted information and believe the allegation is admitted.

25. The Answer to the Amended Notice of Opposition is timely filed.

Wherefore the Applicant requests to dismiss L'Oréal's original and Amended Notice of Opposition as it did not present any objective proof for the statement "confusion or mistake, or has any intent to deceive" of the Applicant's mark, the Applicant's Application in the class 3 to be sustained, and based on the above mentioned evidences the Applicant asks for a protection under Antitrust law which seeks to make businesses compete fairly and "forbids the pursuit or maintenance of monopoly power" and grant such other reliefs as it deems just and proper.

Dated: August 28, 2012

Respectfully submitted,

/Mikhail Levitin/

P.O. Box 102
Reeders, PA 18352
Ph.: (570) 620-1024
Applicant

Exhibit I

Attached:

- “letter Revlon 01.15.70;
- “letter 10.09.70”
- “letters Foreal”.

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2012, a true and complete copy of the foregoing

ANSWER TO AMENDED NOTICE OF OPPOSITION

has been served on Opposer electronically, as agreed upon by the parties, by sending this

copy by e-mail to **Edith R. Lopez | Paralegal,**

Paul Hastings LLP | 75 East 55th Street, New York, NY 10022 | Direct:

+ 1.212.318.6779 | Main: + 1.212.318.6000 | Fax: + 1.212.230.5133 |

edithlopez@paulhastings.com | www.paulhastings.com.

/Mikhail Levitin/
Mikhail Levitin

A. Fraenkel
10-13 Fairham Pl
Fairham NY

Mr & Mrs L. Stempel & Family
2785 W 5th Street
Brooklyn NY 11224



Mikhail Levitin
1/14 Anna Sevryanova St.
Apt 25
Moscow, USSR
1/15/70

Revlon
Larry Stempel, CPA
2785 W. 5th Street, #1A
Brooklyn, NY 11224

Dear Mr. Stempel,

Thank you for agreeing to examine my cream as a possible addition to Revlon's products line.

I believe that in the proximate future people will have increasing demand for skin care products due to the fact baby boomers are not getting any younger.

This product is "for real"! I even named it "Foreal by Mikhail". I decided to contact your company, but feel free to contact anyone who will be helpful and receptive to the idea.

I think Revlon will lose the leadership on the market in 10-20 years if it will not adapt revolutionary new products.

It is dangerous for me to contact you directly, so I will do so through your wife. I am trying to leave the USSR legally, but getting more restrictions...

Let's be optimistic and plan to develop and market my anti aging cream in the USA. I will send you a shipment of 100 samples to start through my Yugoslav friends.

The original copy of this letter is in the attached envelope, which was mailed to you by a friend.

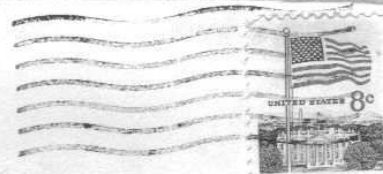
Please, do not open the envelope! I might need it as a time sensitive proof in the future.

With respect,





Mrs A. Stempel
2785 West 5th St.
B'klyn, 11224, N.Y.



Mrs A. Stempel
2785 W. 5th St.
Brooklyn, 11224, N.Y.



Mrs A. Stempel
2785 W. 5th St
Brooklyn, 11224 N.Y.